



U.S. Citizenship
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Services

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FILE: LIN 02 242 55874 Office: NEBRASKA SERVICE CENTER

Date: APR 26 2004

IN RE: Petitioner:
Beneficiary:


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a computer consulting business that seeks to employ the beneficiary as a financial analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a financial analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 16, 2002 letter in support of the petition; and the petitioner's

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing and developing databases; client/server development; analyzing client's financial needs through systems development; analyzing client's financial records; devising methods and procedures of collecting and processing data and providing interpretation and solutions; and organizing data into a report format and arranging for graphic presentation through use of data systems. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or finance.

It is also noted that on the Form I-129 Supplement H, the proposed duties were described as follows:

Design, implement and maintain billings, clients and revenue systems. Perform general accounting. Prepare financial statements and portfolio performance reports. Analyze profitability, time and billing.

The director found that the proffered position was not a specialty occupation because the petitioner made material changes to the proffered position's associated job responsibilities after the filing of the petition. Citing *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971), the director noted that a petition, once filed, may not be approved at a future date after the petitioner becomes eligible under a new set of facts.

On appeal, counsel states that a new petition has been filed. Regarding the instant petition, counsel states that, although the initial job description was submitted in error, the conditions of employment never changed, that the proffered position is that of a financial analyst. Counsel also states that the petitioner is a well-established business that had another petition for a financial analyst position recently approved.

As the director's denial and the petitioner's appeal are based solely on the issue regarding material changes made to the petition, the AAO will address this issue only.

Counsel's statement is noted. Citizenship and Immigration Services (CIS) regulations, however, affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change a position's title or its associated job responsibilities after the filing of the petition. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, as have occurred here, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. In this case, the duties as they were initially described, such as performing general accounting and designing, implementing, and maintaining billings, were not clearly the duties of a financial analyst. As such, the director properly denied the petition.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.